In the Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77 - 1008

SIOUX CITY AND NEW ORLEANS BARGE LINES, INC.,

Petitioner

versus

HELENA MARINE SERVICE, INC., as Owner of the Barge HMS-6,

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals
For the Eighth Circuit

JONES, WALKER, WAECHTER, POITEVENT, CARRERE & DENEGRE
ROBERT M. CONTOIS, JR.
3501 North Causeway Boulevard
9th Floor
Metairie, Louisiana 70002
Telephone: (504) 837-5325

Attorneys for Respondent

A B Letter Service, Inc.,327 Chartres St.,New Orleans, La.(504)581-5555

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 77-1008

SIOUX CITY AND NEW ORLEANS BARGE LINES, INC.,

Petitioner

versus

HELENA MARINE SERVICE, INC.,
as Owner of the Barge HMS-6,

Respondent

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals
for the Eighth Circuit

Respondent, Helena Marine Service, Inc., opposes the application of petitioner, Sioux City and New Orleans Barge Lines, Inc., for a writ of certiorari to review the decision of the United States Court of Appeals for the Eighth Circuit in this matter. Petitioner has failed to demonstrate grounds for granting a writ in accordance with Rule 19 of this Court.

ARGUMENT

I.

The Decision of the Court of Appeals Is In Harmony With Prior Decisions of This Court

Petitioner contends that the decision of this Court in *Langnes v. Green*, 282 U.S. 531 (1931), compels a reversal of the appellate court's decision in this matter. To the contrary, respondent submits that the Court of Appeals properly applied the principles set forth in the *Langnes* decision.

The dispute in *Langnes* was whether a district court should dissolve an injunction issued in a limitation proceeding in order to permit a single claimant to pursue a remedy in a common law forum. This Court ruled that the court below should have exercised its discretion to permit a common law remedy under the facts of that case. There are factual distinctions between the *Langnes* case and the situation before the Court in these proceedings:

a. In *Langnes*, the state court proceeding was filed four months before the limitation proceeding, and the limitation was filed only two days before trial in the state court. No suit was filed against Helena Marine before limitation was sought in these proceedings, and Helena has not used these proceedings to take jurisdiction from a common law court in a pending action.

b. In *Langnes*, the court emphasized that the nature of the accident and the surrounding circumstances created a presumption that no other claims existed. Both the District Judge and the Court of Appeals have emphasized in their decisions in this matter that Sioux City's claim is not the only claim facing Helena Marine; in fact, Sioux City wants the injunction dissolved for the avowed purpose of filing a third-party action against Helena Marine in the very proceedings where the other claim is being asserted.

In relying on *Langnes v. Green*, petitioner has failed to take into consideration the subsequent history of that case reported in *Ex Parte Green*, 286 U.S. 437, 76 L.Ed. 1212 (1932). After the claimant there had been permitted to proceed with his common law action, developments during the course of the trial made it mandatory for the federal district court to re-issue its injunction. Apparently, the issues that were sought to be tried in the common law proceeding were inextricably interwoven with the limitation issue. Under those circumstances, the jurisdiction of the federal court became exclusive, and the state court action could not be prosecuted further. See *Famiano v. Enyeart*, 398 F.2d 661 (7th Cir. 1968).

For reasons beyond this record, Mrs. Fiers elected not to assert a claim in the limitation proceeding. It is clear, however, that she is pursuing a claim arising out of her accident in the Illinois state court. If the injunction were dissolved, and if Sioux City were successful in bringing Helena Marine before the Illinois court by way of a third-party claim, Mrs. Fiers would also be free to assert a claim against Helena. It certainly seems probable that she would do so, but in any event the District Judge was entitled to take the prospect into consideration in exercising his discretion by refusing to dissolve the injunction. *Langnes* establishes that judicial discretion must be exercised in an admiralty court's control of the forum by way of the limitation injunction. The notion of discretion means different results in different circumstances. Dissolution was ordered in *Langnes* after the Court noted that there were no other potential claimants. Here the District Judge recognized the additional claimant, applied the *Langnes* principle to different facts, and reached a different result. His action, affirmed by the Court of

Appeals, is not contrary to prior decisions of this Court.

II.

There Is No Conflict Among The Circuits

Petitioner seeks to establish a conflict between the decision of the Eighth Circuit in this matter and a prior decision of the Fifth Circuit in *Humble Oil & Ref. Co. v. Reagan*, 311 F.2d 576 (1962). There is no conflict, and no ground for granting a writ on that basis.

The decision of the Fifth Circuit in the *Humble Oil* case merely adopted the findings and conclusions of the district court without further comment. The opinion of the district court, *In re Humble Oil & Ref. Co.*, 210 F.Supp. 638 (S.D. Tex. 1961), shows beyond question that there was a true single claim before the Court in that instance.

> "Mrs. Reagan and her minor son present only one claim for damages inasmuch as the Texas Death Statutes under which she and her son seek recovery allow only one action for damages. Although these statutes designate numerous beneficiaries, they authorize only one recovery of one sum, with the sum recovered to be apportioned among the statutory beneficiaries according to their several rights." 210 F.Supp. at 629.

Further in the *Humble Oil* case, the district court pointed out that one claimant, The Travelers Insurance Company, asserted that it was entitled to a portion of Mrs. Reagan's claim, and did not assert a separate claim in its own right.

Other comments in the decision with respect to another claimant, Otis Engineering Corporation, indicate the district court's disposition to follow the course of action which the Eighth Circuit approved in this matter. Otis, the employer of the deceased, admitted that it had no ascertainable claim at the time the Court was ruling, but the Court stated:

> "If, at a later time, facts emerge to ripen the claim of Otis, or if other parties with valid claims arising out of this occurrence are allowed to assert them against Humble (realizing that the time for filing claims in the limitation proceeding elapsed on October 30, 1961), then a concourse can take over the situation as it then is." 210 F. Supp. at 638.

The distinction between the *Humble Oil* case and this one is that in *Humble Oil* there was a single claim with three parties claiming some portion of it. Here the Court was confronted with the claim for personal injury of Mrs. Fiers (whether asserted in her own name or by Sioux City in an indemnity action) and the separate, distinct claim of Sioux City for attorneys' fees and expenses incurred in defending the suit by Mrs. Fiers against it in the Illinois court. The same distinction exists with respect to *Petition of M.D. Howlett*, 75 F. Supp. 438 (E.D.N.Y. 1948), also cited by petitioner here as an example of a conflicting decision. The second claim in *Howlett* was that of an insurer seeking to recover that portion of the damages to which it was subrogated by virtue of having paid compensation benefits to an injured employee. It was against a situation of a single claim to be divided between the principle claimant and his subrogee.

Petitioner did cite one decision, *In re Republic of South Korea*, 175 F. Supp. 732 (D. Ore. 1959), which did not make the distinction between indemnification for the principle claim and the separate claim for the cost of defending against it. The Eighth Circuit considered that decision and rejected it as not being persuasive. The existence of a conflict between this decision and one in the District of Oregon does not fall within the statement of considerations governing the granting of a writ expressed in Rule 19.

III.

The Circumstances of this Case Do Not Call For An Exercise of Supervisory Power

The final ground asserted by petitioner in applying for a writ of certiorari is the contention that the Eighth Circuit's decision sanctions action by the district court which is a departure from the usual course of judicial proceedings of such a magnitude as to require exercise of supervisory power by this Court. The only argument advanced is speculation as to how this decision might be guilefully employed in the future to defeat legitimate rights of potential claimants. However, the two examples suggested by petitioner are purely fanciful.

Petitioner suggests that a vessel owner could create multiple claim situations by refusing to pay medical bills incurred by an injured plaintiff or funeral expenses of a deceased seaman. In neither case would such a claim arise which could possibly be subject to a limitation proceeding. If an employer arranged for medical care either by directly ordering or by authorizing such services, he would be obligated to pay those dispensing the services because of his independent con-

tract subsequent to the casualty. In no sense would that be a claim in a limitation proceeding. Otherwise, if the injured seaman himself incurred the medical expense, it would be either a portion of his damage claim or a separate claim for cure. Claims for maintenance and cure are themselves exempt from limitation defenses. *Murray v. New York C. R.R.*, 171 F. Supp. 80 (S.D.N.Y 1959), aff'd, 287 F.2d 152 (2d Cir. 1961). The same would be true with respect to funeral services. The vessel owner would be obligated to pay funeral expenses directly to the undertaker only if he had ordered or authorized the services. He could not "create" a new claimant in such a fashion.

Petitioner's examples demonstrate no departure by the district and appellate courts in this matter from normal admiralty proceeding. There is no need to exercise supervisory power in these circumstances.

CONCLUSION

The Courts below were confronted in this matter with two distinct claims and two separate claimants. A proper injunction was issued, and the District Court was well within its discretionary power in refusing to dissolve that injunction. The Court of Appeals has fairly and properly evaluated the appeal of petitioner seeking to have the injunction vacated. Its refusal to vacate was based on proper application of the decisions of this Court and is consistent with the existing practices of the other appellate courts. There is no valid basis for granting a writ of certiorari.

Respectfully submitted,

ROBERT M. CONTOIS, JR.

JONES, WALKER, WAECHTER,
POITEVENT, CARRERE &
DENEGRE
3501 North Causeway Boulevard
9th Floor
Metairie, Louisiana 70002
Telephone: (504) 837-5325

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Opposition to Petition for Writ of Certiorari have been served on Michael D. O'Keefe, 1 Mercantile Center, Suite 3400, St. Louis, Missouri 63101 and Charles B. Roscopf, P.O. Box 551, Helena, Arkansas 72342, this 7th day of April, 1978.

_____

Counsel for Respondent